



(As of: March 2016)

National Ocean Council Committee on Combating IUU Fishing and Seafood Fraud Update on Implementation of Task Force Recommendation 2: Best Practices

Direct the Task Force to develop, within one year (and refine as appropriate in subsequent years), best practices for catch documentation and data tracking; high seas boarding and inspection; monitoring, control, and surveillance measures (including observer programs, vessel tracking systems, authorized vessel lists); port State control; and compliance monitoring, and promote their adoption in each of the Regional Fishery Management Organizations (RFMOs) of which the U.S. is a member.

Introduction

As called for in the Task Force Action Plan, the National Oceanic and Atmospheric Administration (NOAA) and the Department of State convened an interagency working group (WG) to develop RFMO best practices on Monitoring, Control, and Surveillance (MCS) measures. The WG also included members from the U.S. Coast Guard (USCG), and the Department of Justice (DOJ).

The WG analyzed the critical principles and elements of best practices in individual MCS measures, but noted that these practices should be considered within the context of a full MCS regime. In addition, the WG underscored that all best practices should be tailored to the specific needs and goals of individual RFMOs. Finally, the WG recognized that best practices may, as suggested in Recommendation 2, change over time as both the nature of illegal, unreported, and unregulated (IUU) fishing activity, and the tools available to address it, continue to evolve and change.

Scope

Relevant Regional Fisheries Bodies: The United States is an active member of several regional fisheries management organizations (RFMOs) and participates as an observer or cooperating non-member at others. The WG focused its review and analysis on relevant MCS practices in those RFMOs of which the United States is a member, namely: the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Northwest Atlantic Fisheries Organization (NAFO), the Inter-American Tropical Tuna Commission (IATTC), the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)¹, and the Western Central Pacific Fisheries Commission (WCPFC). In addition, the WG also analyzed measures adopted by the South Pacific Regional Fishery Management Organization (SPRFMO), where we participate as a cooperating non-contracting party and the North Pacific Fisheries Commission (NPFC). The United States is in the process of ratifying the agreements establishing these two organizations, and will join both upon the passage of implementing legislation pending before Congress.

Finally, where WG members had general knowledge of implementation of MCS measures by RFMOs of which the United States is not a member (e.g., the Commission for the Conservation of Southern Bluefin Tuna, the Northeast Atlantic Fisheries Commission, and the Indian Ocean Tuna Commission) the WG considered this information as well.

¹ Although not technically an RFMO, CCAMLR operates in much the same way as the RFMOs listed here – by managing fisheries and implementing MCS measures – and therefore was included in the analysis.



MCS Measure “Categories”: The WG reviewed the following types of measures that were identified in the Action Plan: high seas boarding and inspection (HSBI), vessel tracking, observer programs, authorized vessel lists, port State controls, and compliance review processes. To cover a more comprehensive suite of MCS practices, the WG also reviewed transshipment controls and IUU vessel list measures. More information about each of these MCS categories is provided at the end of the document.

Note that the Action Plan also called upon the WG to consider best practices for multilateral catch documentation schemes. Given that the Food and Agricultural Organization (FAO) is still in the process of developing international best-practice guidelines on catch documentations schemes, with a negotiating session planned for late April, the WG decided to delay consideration of such measures until more guidance from this process could be taken into account.

Process

The WG initially reviewed current MCS measures in relevant RFMOs, taking note that not all RFMOs have all of the reviewed categories of MCS measures in place. The WG then established small sub-groups of technical and RFMO experts to further analyze and determine the critical elements of each category of MCS practice.

In general, the WG used three methods of analysis in developing best practices. For certain measures where a global standard exists, such as the high seas boarding and inspection provisions of the United Nations (UN) Fish Stocks Agreement and the port State measures in the FAO Port State Measures Agreement, the WG based its analysis on that standard, while also reviewing measures adopted by RFMOs and, where appropriate, domestic approaches to incorporate any additional innovations. Similarly, for measures that have been broadly adopted with generally similar provisions by relevant RFMOs, the WG analyzed those measures together with domestic approaches, where appropriate, to inform the development of best practices. Finally, for those measures that do not have a global standard and where practices across RFMOs vary considerably, the WG worked to identify key principles and elements of that should underlie measures in that category, regardless of whether or not relevant measures existed in all RFMOs.

Adapting Best Practices to RFMO Measures

The WG identified practices that RFMO experts across the USG consider essential elements of each respective category of MCS measure. Nevertheless, RFMOs are not identical in structure and operation, and there are significant regional differences that may impact effectiveness and practicability in some cases. Additionally, membership, political realities, and resource constraints within an RFMO will likely affect how the U.S. delegations will be advancing these best practices. Moreover, the relative priority placed on advancing these issues will be affected by other U.S. priorities within each RFMO and at each RFMO meeting. Delegations may find it necessary to adapt measures depending on the situation of each RFMO, with a view to ensuring progress on the issues while retaining the goal of eventually establishing measures that are fully consistent with these critical elements.



Finally, while the Task Force Action Plan states that a set of best practices should be completed in September 2015, the language of the recommendation reflects the intention that this should be an iterative process. As stated above, the WG noted that IUU fishing, and RFMO capabilities to address it, are constantly evolving - the best practices identified were, thus, not static, but likewise can and may need to evolve. The WG aims to regularly review RFMO practices to continue to enhance the MCS capabilities at the organizations to which the U.S. is a party.

USG Positions at Recent RFMO Meetings

The Task Force Action Plan calls upon USG delegations to begin advancing best practices by December 2015. Given the timing of RFMO meetings relative to the development of the Rec 2 analysis, delegations were able to consider the work of the WG in advancing improvements to MCS measures at the annual meeting of WCPFC in December, and also at the meetings of CCAMLR and ICCAT held earlier in the fall.

CCAMLR

For the 34th meeting of CCAMLR, the United States submitted a proposal to increase monitoring and control of transshipments within the Convention Area. Some of the requirements that the United States sought to add to the existing advance notification requirements included establishment of Contracting Party and Non-Contracting Party transshipment vessel records, only allowing transshipments between vessels on these records, and detailed reporting of transshipments after they occur. As consensus on making improvements could not be reached, discussions will be continued in the intersession. The United States participated in the development and, during the annual meeting, adoption of recommendations to enhance the vessel monitoring system requirements. CCAMLR increased Vessel Monitoring System (VMS) position reporting frequency for finfish (i.e., toothfish and icefish) vessels from four hours to one hour, reduced the time that Contracting Parties have to forward position reports to the Secretariat, and set minimum standards for the enhanced mobile transceiver units or EMTUs on vessels. The United States also participated in efforts to improve the process for evaluating member compliance.

ICCAT

At the 2015 ICCAT Annual Meeting, the United States continued its longstanding effort to revise ICCAT's Joint Scheme of International Inspection, as the current scheme is out of date and is only actively applied to the eastern Atlantic and Mediterranean bluefin tuna fishery. In an effort to find compromise with those ICCAT members reluctant to accept a binding scheme applicable to all high seas portions of the ICCAT Convention area due to policy and/or domestic legal concerns, the proposal presented in 2015, which was co-sponsored by the United States, the European Union, Panama and Senegal, included two options: a binding scheme applicable to the high seas portions of the Convention area or a non-binding model scheme to be activated on a fishery-by-fishery or stock-by-stock basis. Consensus could not be reached on the proposal, but parties agreed to continue considering how to advance the issue. The matter will next be taken up at a 2016 ICCAT intersessional meeting and is also expected to be considered at the 2016 ICCAT Annual Meeting.



In other monitoring, control, and surveillance matters, the United States encouraged parties in need of capacity building assistance to fulfill their obligations under ICCAT's port inspection scheme to seek access to the organization's capacity building fund, which was established in 2014 for this purpose. We also sought to clarify implementation of ICCAT's IUU vessel cross-listing process with other RFMOs to ensure transparent and timely implementation in the future. Finally, the United States participated in efforts to improve the process at ICCAT for evaluating member compliance, including by implementing electronic submission of member reports. Discussions on how the compliance evaluation process can be improved will continue in 2016.

WCPFC

During its Twelfth Regular Session of the Western and Central Pacific Fisheries Commission (WCPFC) in December, the U.S. was instrumental in the advancement a number of important modifications to current MCS measures. The United States has led the effort over the past several years to significantly revise and improve the Commission's Compliance Monitoring Scheme (CMS) to assess and increase member compliance with WCPFC conservation and management measures. The CMS measure reflects a number of substantive changes, including new compliance statuses that better reflect capacity building needs, ongoing investigations and measures that need refinement, more robust options for responding to non-compliance, and a clearer articulation of the decision making and prioritization process. The United States endeavored to gain agreement on making the revised measure permanent, but was only able to reach agreement on a two-year measure that would be subject to further review.

The United States also materially contributed to the adoption of a number of amendments to current measures in place for the WCPFC Observer Program – which included the addition of a pre-notification process from observer providers to flag CCMs of possible alleged infringements - and the WCPFC vessel monitoring system (VMS) standards, specifications and procedures – which included modifications to ensure that VMS units meet minimum technical standards. Members also agreed that a new conservation and management measure should be drafted to clarify responsibilities in the event of alleged observer safety incidents. The United States offered to lead this work intersessionally.

The United States supported a number of other decisions related to MCS measures, including deadlines to complete minimum required data fields for vessels on the WCPFC authorized Record of Fishing Vessels, efforts to strengthen cooperation among Members and Cooperating Non-Members to locate vessels listed on the WCPFC IUU vessel list, development of an online technical solution to make available information on high seas boardings and inspections, and further review of proposed amendments to strengthen the current management measure for transshipment controls.

MCS Categories

This summary highlights the major conclusions of the WG related to each of the different MCS tools, including where there were already elements of consistency or divergence among the RFMOs and which key elements were important to assess for best practices.



Authorized Vessel Lists

The FAO's International Plan of Action to Prevent, Deter, and Eliminate IUU Fishing calls on States to submit information on authorized vessels in order to ensure comprehensive and effective MCS of fishing fleets and to deter IUU activities. Most RFMOs have developed authorized vessel lists for at least some of the fisheries under their purview, but their data elements and procedures are not all consistent. The WG identified critical aspects of an authorized vessel list to include the scope of vessel listing measures, the information that must be provided about each vessel to be included on the list, and the consequences to a vessel (or its flag State) for engaging in fishing and fishing-related activities while not on the relevant authorized vessel list.

Compliance Review Processes

RFMOs provide a forum for the cooperative conservation and management of fisheries through the development and adoption of binding measures. RFMO members have the primary responsibility to ensure domestic implementation of those measures, and to take appropriate action to address non-compliance by vessels and persons subject to their jurisdiction. Member compliance with RFMO measures—and non-member cooperation—is critical to the success of RFMOs in meeting their objectives, and RFMOs can play an important role by recommending corrective measures, where needed, and considering capacity building needs and ways to address them, where appropriate.

Specifically, each RFMO has adopted a process to review and determine compliance with RFMO rules by members and, in some cases, by cooperating non-members – with some processes including consequences that must be implemented for non-compliance. While it is clear that having a universal process across RFMOs is not feasible in the short term, nor may it even be desirable, there are several critical aspects of the compliance review process that the United States should promote. In addition to identifying where a party has failed to meet its obligations, compliance evaluation is useful for determining whether measures must be revised, whether obligations may be broadly misunderstood and need to be clarified; or whether compliance can be made more measurable and transparent (e.g., by adding reporting requirements). The compliance review processes are also useful in determining where members, or cooperating non-members, may need technical or other capacity-building assistance to enable them to meet their obligations.

High Seas Boarding and Inspection

The UN Fish Stocks Agreement recognizes the critical role that HSBI schemes play in ensuring effective enforcement of RFMO conservation and management measures, a level playing field for participants, and sustainable fishing practices. The development of measures, including HSBI schemes, by RFMOs is an iterative and evolutionary process with each RFMO, building upon precedents set by other RFMOs. Nevertheless, it is important that the standardization of practices focuses on transparency, fair and appropriate inspection efforts to prevent uneven implementation, real time notification procedures, and safety.



IUU Vessel Lists

An IUU vessel list is one in a set of comprehensive compliance tools that is used within RFMOs to address areas of non-compliance by individual vessels. An IUU vessel list is intended to bring about consequences for specific vessels, with a goal of deterring and eliminating IUU activities. Vessels can be nominated for inclusion on an IUU vessel list by members of the RFMO based on information from a member or, in some cases, from outside sources. The negative public perceptions associated with having a vessel on an IUU list, and the responsive actions necessary to have a vessel removed from the IUU vessel list, can be useful in pressuring the flag State of a listed vessel, or vessel that is proposed for listing, to take appropriate responsive action or otherwise improve their performance with respect to flag State controls.

Each RFMO maintains an IUU vessel list, and the procedures and elements of each listing scheme are similar in most key areas, though not identical. In supporting IUU vessel listing processes that are clear, transparent, and objective, critical elements include consistent standards for: listing, delisting, sources and types of information that can lead to a listing/delisting, vessel information included on the list, consequences for vessel listing, and public sharing of the vessel list.

Observer Programs

Independent monitoring of vessel activities is critical to obtaining accurate data that, among other uses, can help detect IUU fishing activities. A common technique for collecting fishery-related data is through the deployment of observers on fishing vessels and (though less often) support and carrier vessels. Observer programs are an important tool to document all aspects of vessel operations, including recording area fished, gear used, species caught, amount and disposition of catch, and interactions with protected species. Fisheries scientists and managers use these data to support stock assessments and make management decisions. Observer data can also be used to detect infringements of conservation and management measures, to prosecute or take other action against violators, and to more efficiently and effectively deploy limited inspection resources.

Most of the RFMOs in which the United States participates either have or are developing measures that would implement observer programs. While measures implementing such programs vary considerably among RFMOs, it is critical that such measures require the collection of data necessary to enhance the scientific underpinnings of the work of the RFMO, and identify IUU fishing activities by having certain elements. The WG identified several of these elements: a specified purpose, objectives, and structure; established scope; appropriate minimum coverage rates; specified observer duties and data collection requirements; outlined educational/training standards; established data and reporting standards; and appropriate distribution of observer data.



Port Inspections

The FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (“Port State Measures Agreement” or PSMA) sets out minimum standards for port and flag State actions to combat IUU fishing through port State controls. The United States strongly supports implementation of the PSMA, of which port inspections are a key element. Although port State controls extend well beyond port inspections, many RFMOs are adopting port State controls in stages, starting with port inspections. To that end, the WG focused its analysis on port inspections, but it will expand its consideration in the future to reflect best practices for the suite of port State controls as reflected in the PSMA.

Transshipment Controls

Transshipments, particularly those that occur at-sea, can provide an opportunity for IUU fish and fish product to move into commerce without detection. Adequate controls, such as requirements for monitoring of in-port transshipments, are critical to reduce this risk. Monitoring of at-sea transshipment poses a larger challenge in most RFMOs and, where feasible and appropriate, RFMOs may consider adopting measures to address at-sea transshipment through strong control and oversight measures.

Vessel Tracking

Vessel tracking is critical to ensuring compliance with RFMO conservation measures. While the FAO Voluntary Guidelines on Flag State Responsibility (2014) recognize VMS as a monitoring tool that should be implemented as part of effective flag State control, they do not set forth specific technical or operational minimum standards for VMS. The WG therefore aimed to identify more technical “best practices” for vessel monitoring. In addition to identifying appropriate phase-in criteria for where VMS requirements are cost-prohibitive, the WG also considered minimum standards for VMS/enhanced mobile transmitter units, reporting requirements, details on position monitoring, confidentiality rules, and protocols to be followed in the event of VMS malfunctions.